

In order to submit claims for credit, taxpayers must first establish that they have either borne the burden of the tax or that they have unconditionally repaid the amount of tax to the vendees from whom they have collected the tax. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

June 8, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated April 21, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY is a general contractor for the construction of hotels. We purchase building materials for our job sites that are located throughout the country from a store located in CITY, IL. We are being charged CITY sales tax on lumber that is being purchased from this store. The lumber is shipped to our wall panelizer, also located in CITY and the completed product is then shipped to our job sites.

Our company has built two hotels at CITY/STATE. Since construction has been completed, the City of NAME is now auditing us. In order for our company to receive the proper building permits, we had to pay the City of NAME the city use tax up front. The payment was based on estimations from the blueprints. As a result of the audit the city is asking for additional tax because the initial calculation was not enough. We have made several attempts with NAME to exclude the city use tax on the invoices for lumber purchased from the vendor mentioned above when figuring the remaining tax due because we paid tax to CITY. If we are required to pay NAME, this is double taxation on our part. The City of NAME states that because we paid them first, we should be entitled to receive a refund from the City of CITY. This is a formal request for a refund of the city tax we have paid to CITY.

Please refer to the enclosures. There is a copy of our most recent letter to the City of NAME as well as a copy of their response. A copy of the building permit information is also enclosed. In addition, there are copies of the invoices in question for your review.

If there are any questions, or if more information is needed, please feel free to contact either PERSON1 or PEROSN2at ####. We look forward to hearing from you by April 30, 1999, as this is the date by which we must respond to the City of NAME.

June 8, 1999

Generally, if retail sales occur in Illinois and purchasers take physical possession of the tangible personal property in Illinois, tax is due absent an exemption. The Use Tax Act contains provisions that limit multi-state taxation of the same item or items. As the enclosed copy of 86 Ill. Adm. Code 150.310, Exemptions to Avoid Multi-State Taxation, explains, the Use Tax shall not apply to the use, in this State, of tangible personal property which is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to this sale, purchase or use of such property, to the extent of the amount of such tax properly due and paid in such other state. See Section 150.310(a)(3). This does not appear to be the case in the situation described in your letter.

Please also find enclosed a copy of 86 Ill. Adm. Code 130.1501, which describes the procedures used to obtain a credit for sales tax that is erroneously paid. Please note that only persons who have actually paid tax to the Department can file a claim for credit. Since retailers usually pay the tax to the Department, usually only retailers can file a claim for credit.

In order to submit claims for credit, taxpayers must first establish that they have either borne the burden of the tax or that they have unconditionally repaid the amount of tax to the vendees from whom they have collected the tax. The taxpayers must apply for the credit in the manner described in the rule. Under Illinois sales tax laws, retailers are not required to file claims for credit. The Department has no authority to compel sellers to file a claim for credit. Whether or not sellers refund the taxes paid and file claims for credit with the Department is a private matter between sellers and purchasers.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk

Enc.